

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001279-MR

FREDERICK WILLIAMS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 14-CI-00298

DONNA MARIE KING-MCKINNEY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, DIXON, AND D. LAMBERT, JUDGES.

COMBS, JUDGE: Frederick Williams appeals from an order of the Franklin Circuit Court granting summary judgment to Donna Marie King-McKinney and dismissing Williams's lawsuit to quiet title. After our review, we affirm.

The facts of this case are undisputed. In December 1986, Williams purchased the real property known as 220 Missouri Avenue in Frankfort.

Williams's deed described the property to include Lots 4, 5, and 6 of the Cherokee Subdivision. The property was not surveyed at that time, and Williams claims that he mis-took an adjacent vacant lot (Lot 3) as his own from the beginning. He claims that he has made continuous use of the disputed lot since 1986 by mowing and weeding it each summer; permitting family members to play there; and, until a city official told him that a city ordinance forbade it, parking his cars upon it. Williams erected no structure upon the land; built no fence; planted no garden or trees. He admits that a survey undertaken in 2008 indicates that no portion of Lot 3 was ever transferred to him.

King-McKinney purchased the real property known as 200 Missouri Avenue in July 2013. Her deed described the entirety of Lots 1, 2, and 3.

On March 14, 2014, Williams filed an action to quiet title against King-McKinney in Franklin Circuit Court. He claimed title to the disputed vacant lot through adverse possession.

After a period of discovery, King-McKinney filed a motion for summary judgment. She argued that Williams could not produce evidence at trial that would warrant judgment in his favor because he could not show that he had engaged in the requisite substantial activity on the vacant lot. She contended that our courts regularly find mowing, weeding, and intermittent recreational use of land to be insufficient to show one's actual possession of the property. She argued that Williams's intermittent use of the property to park cars did not establish any basis for his claim and was insufficient to show his possession of the entirety of the

vacant lot. In response, Williams contended that King-McKinney failed to show that there were no genuine issues as to any material fact and that she was entitled to judgment as a matter of law.

On July 24, 2014, the opinion and order of the Franklin Circuit Court were entered. The circuit court determined that Williams could not establish title through adverse possession and that no genuine issue of material fact precluded the entry of summary judgment. The court concluded that King-McKinney was entitled to judgment as a matter of law. This appeal followed.

In order to quiet title through adverse possession, a claimant must demonstrate -- through clear and convincing evidence -- possession of the disputed property that is hostile to the title owner's interest. *Phillips v. Akers*, 103 S.W.3d 705 (Ky.App. 2002). The possession must be shown to be adverse, open and notorious, exclusive, and continuous for a period of fifteen years. *Id.* (citing *Tartar v. Tucker*, 280 S.W.2d 150, 152 (Ky. 1955); *Creech v. Miniard*, 408 S.W.2d 432, 436 (Ky. 1965); KRS 413.010). The possessor must ““openly evince a purpose to hold dominion over the property with such hostility that will give the non-possessory owner notice of the adverse claim.”” *Phillips*, 103 S.W.3d at 708 (quoting *Appalachian Reg'l Healthcare, Inc. v. Royal Crown Bottling Co.*, 824 S.W.2d 878, 880 (Ky. 1992)).

Williams's intermittent use of the vacant lot as a playground for the family's children is immaterial since the mere recreational use of land is not adequate to establish actual possession of property. The amended version of Kentucky's

Recreational Use Statute, Kentucky Revised Statute[s] (KRS) 411.190(8), provides that “[n]o action for the recovery of real property, including establishment of . . . adverse possession, may be brought by any person whose claim is based on use solely for recreational purposes.” Additionally, the Supreme Court of Kentucky has observed that generally “the mere recreational use of property has as its aim the enjoyment of the land as it naturally is, and thus by its nature, recreational use will be sporadic and insubstantial.” *Moore v. Stills*, 307 S.W.3d 71, 79 (Ky. 2010).

Williams’s weeding and cutting of grass on the vacant lot does not amount to “actual” possession of the disputed property. This sporadic activity upon the land did not amount to a change in its condition that was legally sufficient to put the owner on notice that his or her dominion over the land was being usurped. As the Supreme Court of Kentucky has observed, if merely posting the land and hiking or hunting upon it were enough to establish adverse possession, the law would, in effect, put the trespasser on the same footing as the rightful owner of record. *Moore, supra*. The vacant lot could not be made the object of adverse possession while it remained unimproved and in its natural state.

Finally, we address Williams’s claim that his decision to park his cars on the vacant lot constitutes adverse possession. We are persuaded that this activity amounts to little more than a trespass upon the land of another. Moreover, proof through clear and convincing evidence of a well-defined boundary is an essential element of an adverse possession claim. *Flinn v. Blakeman*, 254 Ky. 416, 71 S.W.2d 961 (1934). As our highest court held more than a century ago, the

disputed property must be “either actually enclosed or so marked that the land is susceptible of being identified by its description.” *Young v. Pace*, 140 Ky. 405, 406, 140 S.W. 555 (1911). Williams has not alleged that he made any effort to enclose or to mark in any way the property that he claimed as his own for additional parking. Consequently, he cannot prove this essential element of his claim for adverse possession.

The circuit court did not err by concluding that King-McKinney was entitled to judgment since Williams’s claim for adverse possession based upon his sporadic or insubstantial use of her property was insufficient as a matter of law. Consequently, we affirm the judgment of the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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